**********

The "officially released" date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the latest version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.



**********

# STAMFORD PROPERTY HOLDINGS, LLC *v.* DORIAN JASHARI ET AL.
## (AC 45151)

Moll, Seeley and Lavine, Js.

*Syllabus*

The plaintiff lessor sought, inter alia, reformation of a commercial lease between the plaintiff and the defendant lessees, J and I, based on unilateral or mutual mistake. The parties negotiated the long-term lease of a car wash facility owned by the plaintiff. Except for J's initial offer, all of the proposals contained rental payments on a triple net basis, wherein the defendants would be responsible for expenses related to insurance, maintenance, and real estate taxes in addition to base rent. After the parties signed a letter of intent that included a triple net provision, the plaintiff instructed its attorney to prepare a formal lease incorporating the material terms of the letter of intent. In doing so, the plaintiff's attorney mistakenly omitted the triple net provision in the lease. The parties signed the lease and, thereafter, the plaintiff sent J an invoice that included reimbursement for real estate taxes, which J refused to pay. After a bench trial, the court found in favor of the plaintiff on its reformation claim, primarily based on the ground of mutual mistake but, in the alternative, on the ground of unilateral mistake coupled with inequitable conduct on the part of the defendants. The court subsequently ordered that the lease be reformed to account for the triple net rent and that the defendants reimburse the plaintiff for the real estate taxes in accordance therewith. On the defendants' appeal to this court, *held*:

1. This court declined to consider the merits of the defendants' claim that the trial court improperly granted reformation of the contract based on the ground of unilateral mistake because there was no clear, substantial, and convincing proof of inequitable conduct on the part of the defendants, as that claim was moot: the trial court concluded that the plaintiff satisfied both alternative grounds alleged in the complaint for reformation, mutual mistake and unilateral mistake, and, because the defendants failed to challenge on appeal the court's finding of mutual mistake, this court, even if it agreed with the defendants' claim regarding unilateral mistake, could not provide them with any practical relief; moreover, although the plaintiff specifically urged the court to order reformation based on unilateral mistake in its posttrial brief, the defendants failed to show that doing so constituted a withdrawal of the mutual mistake ground, as the plaintiff's complaint, which asserted a claim for reformation on both grounds, was never amended; furthermore, contrary to the defendants' claim, it was not logically impossible for the trial court to find mutual mistake and, alternatively, unilateral mistake coupled with inequitable conduct, because, even if a party testifies that a mistake was not common to both parties, as J testified, the trial judge can find that testimony to be lacking credibility, find testimony in support of the contrary to be reliable, and, consequently, grant reformation on the ground of mutual mistake, and, simultaneously, the trial court could determine that the ground of unilateral mistake was alternatively satisfied because, even if the plaintiff failed to establish that J was also mistaken, there was sufficient evidence of inequitable conduct by J.
2. The defendants could not prevail on their claim that the plaintiff's misconduct prior to the execution of the lease precluded the plaintiff from prevailing on its claim for reformation: it is well settled that the unquestionable negligence of the party seeking relief, such as the failure to read the written instrument and notice the mistake, does not bar its claim for reformation, and, here, the trial court's factual findings directly refuted the underpinnings of the defendants' argument that the plaintiff's behavior prior to the execution of the lease was reckless, rather than merely negligent, and, accordingly, it was not an abuse of the trial court's discretion or an injustice for the court to have granted the plaintiff equitable relief in the form of reformation.

Argued October 11, 2022—officially released March 14, 2023

*Procedural History*

Action seeking, inter alia, reformation of a contract, and other relief, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the court, *Povodator*, *J.*; judgment for the plaintiff, from which the defendants appealed to this court. *Appeal dismissed in part*; *affirmed*.

*Alexander H. Schwartz*, for the appellants (defendants).

*James R. Fogarty*, for the appellee (plaintiff).

*Opinion*

SEELEY, J. The present appeal arises out of an action brought by the plaintiff lessor, Stamford Property Holdings, LLC, against the defendant lessees, Dorian Jashari (Jashari) and Ismet Jashari,[1] seeking, inter alia, reformation of a commercial lease between the parties based on unilateral or mutual mistake. The defendants appeal from the trial court's judgment in favor of the plaintiff. On appeal, they claim that the court (1) improperly granted reformation of the contract based on the ground of unilateral mistake because, contrary to the court's conclusion, there was no clear, substantial, and convincing proof of inequitable conduct on the part of the defendants, and (2) erred by granting the plaintiff equitable relief because the plaintiff's misconduct before the parties executed the lease barred its claim for reformation. We conclude that the defendants' first claim is moot, and we are not persuaded by their second claim. Accordingly, we dismiss as moot the portion of the appeal related to the first claim and affirm the judgment of the trial court.

The following facts, which either were found by the trial court or are undisputed, and procedural history are relevant to our review of this appeal. In May, 2019, Jashari, a then twenty-one year old recent college graduate who was a "moderately sophisticated, well educated entrepreneur,"[2] was in search of a business venture when he learned that the plaintiff was offering a long-term lease of its car wash facility located at 249 Greenwich Avenue in Stamford. Jashari subsequently contacted the brokers on the listing, Jeff Snell and Andrew Paul of Pyramid Realty Group.[3] Paul emailed Jashari a brochure about the property that advertised a "key money"[4] amount of $400,000 and provided that "[g]oing forward the tenant will be responsible for payment of the [real estate] taxes, approximately [$]35,270 (2018)." Later that month, Jashari began negotiations with Gregg Mercede, the plaintiff's sole member and manager, through the brokers.

Jashari's first offer to Mercede to lease the car wash was for $200,000 in key money and $12,000 per month in rent. On June 6, 2019, Mercede counteroffered at $300,000 in key money with rental payments at $12,000 per month triple net for three years, escalating at the rate of 2 percent per year thereafter. Mercede's counteroffer, unlike Jashari's initial offer, contained rental payments on a triple net basis, also referred to as "NNN," which, as explained by Snell at trial, meant that, in addition to base rent, the tenant would be responsible for certain expenses of the property, including the payment of insurance premiums, maintenance expenses, and notably, for purposes of the present appeal, real estate taxes.[5] Mercede and Jashari continued to negotiate and make offers to one another, all of which included, among other things, triple net rent. In mid-June, Jashari and

Mercede signed a letter of intent that, in relevant part, provided for a key payment of $300,000 and rent of $9500 per month triple net for the first two years, increasing in the years thereafter. The letter also contained a provision that provided Jashari with a right, exercisable within six months, to lease an additional adjacent property for $2600 per month.

After Jashari signed the letter of intent, he prepared a pro forma profit and loss projection (projection) for the plaintiff so that it could obtain approval from its lender. During this time, the plaintiff instructed its attorney, Bruce Cohen, to prepare a formal lease incorporating the material terms of the letter of intent. In doing so, Cohen mistakenly omitted the triple net provision in the lease. The lease then was circulated among the parties. Jashari proposed three technical changes that did not alter the terms of the lease, which were accepted by Mercede and incorporated into the final agreement. The lease was signed without any comments from the parties as to the missing triple net provision. When Jashari signed the lease, he paid the $300,000 in key money and a security deposit to Mercede. The closing took place on September 17, 2019.[6] At the closing, Jashari signed a second lease addendum (addendum), which required Jashari to purchase specific equipment, supplies, and a billboard lease from the plaintiff. That same day, Jashari paid Mercede the prorated rent and utilities owed for September and prepaid for the month of October. Mercede did not ask Jashari to pay real estate taxes for September or October on that day.

On September 30, 2019, approximately two weeks after Jashari took possession of the property, the plaintiff sent Jashari an invoice that included a charge for reimbursement of real estate taxes. That same day, Jashari emailed Snell the following: "We have a major issue with the rent. The contract does not reflect the current invoice billed. Please contact me as soon as possible." Snell responded that he needed "to review against the lease" and would call Jashari in the morning. Snell then advised Jashari to reach out to Mercede. Mercede emailed Jashari and Cohen an "invite" to a meeting "to have a discussion regarding the misunderstanding [of] the taxes." The evidence in the record does not confirm whether this meeting took place or, if it did, what was discussed. Ultimately, Jashari refused to pay the real estate taxes, and, thereafter, the plaintiff commenced this action on October 21, 2019. The plaintiff's complaint sought reformation of the lease because it did "not conform to the real contract agreed upon . . . and was executed as the result of a mutual mistake of the parties" or, alternatively, "[a] mistake of the [plaintiff] coupled with actual or constructive inequitable conduct on the part of [the defendants]."[7]

A two day bench trial was held on May 13 and 14, 2021, at which Jashari, Mercede, Cohen, Snell, and Paul

testified. Jashari testified[8] that he was aware at the time he signed the lease that it did not contain the triple net provision and, consequently, under the terms of the lease, he was not obligated to pay the real estate taxes. He further testified that, before the lease was drafted, he had discussed his concern about paying the real estate taxes with Snell and Paul, and they told him on multiple occasions that the plaintiff would pay the taxes. The plaintiff's counsel asked Jashari when this conversation took place and how many times, to which Jashari responded: "Could have been three. Could have been five. This is an ongoing conversation that we had. . . . Could have been around June time, I believe. Might have been in July . . . ." Although Jashari confirmed that there was no written documentation that corroborated those conversations, he testified that he was one "[h]undred percent" sure that they took place. Jashari was asked to explain how it was that in June, when he signed the letter of intent, he agreed to pay the real estate taxes, but then by the time the lease was signed in September he was no longer responsible for real estate taxes. He testified: "During this time the actual known financials of the car wash were not clear-cut. My biggest thing was, am I going to make money when I take over this business. . . . The real estate taxes, the numbers were all over the place. The only thing I could base it off of was three years prior for $35,000. . . . So when I'm working out my updated expenses, I come to the conclusion that I'm going to end up with a loss, or I'm going to end up working just to pay my rent. I could not do so."

The plaintiff's counsel pointed out to Jashari that, in the projection, which Jashari himself wrote in July, 2019, the line item for rent listed $156,000 for the first year, which was $42,000 more than the rent listed in the lease. Jashari testified that the difference was not intended to account for the real estate taxes; rather, he was accounting for the additional property that the lease provided him the option of renting for $2600 a month. Counsel further pointed out that the additional $2600 a month would not bridge the difference, to which Jashari responded: "I may not have computed it a hundred percent, but at the time the expenses were not known, so I was not trying to nickel and dime the expenses."

Contrary to Jashari's testimony, Mercede testified that "from day one to the very end" it was his understanding that the rent was to be triple net and, therefore, Jashari was responsible for the payment of the real estate taxes. He further testified that he never had a discussion with Jashari, a representative of Jashari, or the brokers in which his understanding that the rent was to be triple net was changed and that the first time he learned that there was a misunderstanding on the issue of real estate taxes was when Jashari refused to pay them. Mercede was asked by the defendants' coun-

sel about the projection and the missing taxes, to which he stated: "I noticed there was a—the missing taxes, but then I saw the rent was beefed up," so he "believed the taxes were in there." Mercede admitted that, although he was provided with the initial draft of the lease, the minor revisions made to the lease, and the final version, he did not notice the missing triple net provision. He testified, "Yeah. I—you know—I made a mistake. I missed it. I hired Bruce Cohen because I had been out of it for six, seven, eight years. I mean—it's been a long time since I was looking at leases. . . . It's my fault for missing it."

Cohen confirmed that he failed to include the triple net term in the lease, and, therefore, the lease did not impose upon Jashari the obligation to pay the real estate taxes. He agreed that the lease did not "conform to the letter of intent that [he was] using as the guideline for the preparation of the lease." He explained that he "overlooked the [triple net provision] as [he] was drafting the lease" and that he accepted responsibility for the mistake.

The brokers, Snell and Paul, each testified. Snell explained that the offers at the outset all contained triple net provisions because "that was a requirement of the owner landlord that . . . the tenants would be responsible for payment of those additional expenses." The plaintiff's counsel asked Snell, "did [Jashari] ever express to you any resistance or reluctance . . . to pay the real property taxes attributable to the demised premises?" Contrary to Jashari's testimony, Snell responded, "[n]o." Snell testified that he was "under the assumption that this was a triple net lease" and that, although he did have a meeting with Jashari between the time of the signing of the letter of intent and the closing, there was no discussion at the meeting about the real estate taxes; rather, it had to do with the terms of the lease addendum relating to inventory. Snell was also asked by the defendants' counsel whether Jashari had ever told him that he could not pay the real estate taxes because he did not know what they would be, to which Snell responded: "No, I don't recall him ever saying that." Paul testified similarly. The plaintiff's counsel asked Paul, "[t]hroughout the entire process, from beginning to end, what was your understanding as to who was responsible to pay the real property taxes attributable to the demised premises?" Paul responded: "The proposed tenant. It was always . . . the tenant. You know the real estate taxes were going to be in addition to the base rent." Counsel then followed up with, "[a]nd did that ever change, right up through the time when [Jashari] took possession of the premises?" to which Paul responded, "[n]o." Paul, like Snell, testified that he could not remember any conversation in which Jashari said that he did not want to pay the taxes.

The court found in favor of the plaintiff on its reforma-

tion claim based on both theories advanced: unilateral mistake and mutual mistake. It noted that it "primarily" determined that there was a mutual mistake but, alternatively, it held that the unilateral mistake ground was satisfied as well. Overall, the court found that Jashari's testimony lacked credibility.[9] It concluded that this was "not a 'close call' as to whether the plaintiff [had] proven its case by clear and convincing evidence" and that "[t]he evidence and reasonable inferences [left] virtually no reasonable room for doubt." The court's specific findings were extensive. It reasoned that the "most obvious and critical evidence presented to the court" was that Jashari had, at all times, offered to pay more than what the lease required as executed without the triple net provision, including in the letter of intent that he signed. The court pointed out that, as executed, the lease provides for a total monthly payment of $9500, yet "no one EVER contemplated a final agreement that provided for a total monthly payment of $9500" and "[h]owever disingenuous [Jashari] has been, even he appears to lack the audacity to claim (explicitly) that there ever had been a discussion of a total rent of that magnitude, much less an agreement . . . ." The court further reasoned that there was no evidence or conceivable reason—"and one probably could not have been proffered with a straight face—as to why the plaintiff might have suddenly waived approximately $3000 of monthly revenue, dropping [the triple net] requirement" without offsetting the basic rent. It ultimately determined that Jashari's "refusal to acknowledge that there had been a material mistake in the drafting of the lease" by omitting the triple net provision was "patently unreasonable," for "that there had been a mistake is a factual matter that probably would satisfy even a beyond a reasonable doubt standard (if it were applicable)." Accordingly, the court ordered that the lease be reformed to account for the triple net rent and that the defendants reimburse the plaintiff for the real estate taxes in accordance therewith. This appeal followed.

I

The defendants first claim that the court improperly granted reformation of the contract based on the ground of unilateral mistake because, contrary to the court's conclusion, there was no clear, substantial, and convincing proof of inequitable conduct on the part of the defendants. We determine that this claim is moot and, therefore, decline to consider its merits.

The following additional facts are relevant to our discussion. On the first day of trial, counsel for the plaintiff stated to the court that the plaintiff's claim for reformation was "based alternatively upon mutual mistake or unilateral mistake coupled with inequitable conduct." After trial, the parties submitted their posttrial briefs to the court. In its posttrial brief, the plaintiff again noted that its complaint asserted alternative

grounds for reformation, but it focused its brief on unilateral mistake. The plaintiff reasoned: "It soon became obvious in this case that Jashari would never admit a mistake in the lease terms dealing with the obligation to pay real property taxes attributable to the demised premises. Instead, he clearly wants to take advantage of the mistake . . . . *The plaintiff, therefore, urges reformation based on the second alternative ground*—mistake of one party coupled with inequitable conduct of the other party." (Emphasis added.) The defendants addressed both unilateral mistake and mutual mistake in their posttrial brief. As previously mentioned in this opinion, the court found that both grounds were satisfied. It stated in relevant part: "The court concludes that the plaintiff has proven both approaches to establishing a right to reformation. *Primarily, the court has concluded that there was a mutual mistake*, insofar as the lease that was executed did not reflect the actual agreement of the parties, materially departing from the agreement of the parties requiring the defendants to reimburse the plaintiff for property taxes. . . . [And] [t]o the extent that [Jashari] contends that the lease as executed comports with his intent as to the final terms of the agreement between the parties—which the court, admittedly, has unreservedly rejected as a proposition—*then there would have been a unilateral mistake* by the plaintiff coupled with inequitable conduct by [Jashari]." (Emphasis added.)

On appeal, the defendants' first claim challenges the court's decision only as to the unilateral mistake ground. The defendants did not specifically challenge the court's finding of reformation on the basis of mutual mistake but, rather, argued in their principal appellate brief that "[i]n its posttrial brief, the plaintiff withdrew its claim for reformation based on mutual mistake." The plaintiff responded in its brief to this court that it did not withdraw its claim for reformation based on the mutual mistake ground and that, because the defendants failed to challenge that ground on appeal, they abandoned any claim on appeal pertaining to it. The defendants argued in a footnote in their reply brief: "The plaintiff also improperly parses the English language by claiming . . . [that] it did not concede that it was not pursuing its claim [before the trial court] for relief based on mutual mistake. . . . On page eleven of its [posttrial] brief. . . the plaintiff wrote, 'The plaintiff . . . urges reformation based on the second alternative ground—mistake of one party coupled with inequitable conduct of the other party.' . . . It is true that the [previous] sentence does not contain the word withdraw, but the entirety of the plaintiff's argument to the trial court was directed solely to its claim of unilateral mistake. Perhaps the defendants should have written that the plaintiff abandoned its claim of mutual mistake. Nevertheless, the effect of the plaintiff's conduct is unaffected by the language describing it." (Citations

omitted; emphasis omitted.)

Prior to oral argument, we issued an order and requested that the parties be prepared to address the issue of mootness.[10] During oral argument, counsel for the defendants argued that their claim concerning the court's finding of reformation on the ground of unilateral mistake is not moot for three reasons: (1) the plaintiff, in essence, withdrew its claim based on mutual mistake in its posttrial brief, and, as a result, the defendants' counsel "had no notice" that the court was going to look at mutual mistake; (2) it is logically impossible to have mutual mistake simultaneously with unilateral mistake; and (3) based on the facts that the trial court found in its decision, there was no mutuality of agreement at the time the lease was signed, and, therefore, the court could not have found both unilateral and mutual mistake. Counsel for the plaintiff argued that, contrary to the defendants' contentions, the plaintiff did not withdraw its claim for mutual mistake, and, because the defendants failed to address that ground in their first claim, that claim is therefore moot. We agree with the plaintiff.

"Mootness is a question of justiciability that must be determined as a threshold matter because it implicates [a] court's subject matter jurisdiction. . . . We begin with the four part test for justiciability . . . . Because courts are established to resolve actual controversies, before a claimed controversy is entitled to a resolution on the merits it must be justiciable. Justiciability requires (1) that there be an actual controversy between or among the parties to the dispute . . . (2) that the interests of the parties be adverse . . . (3) that the matter in controversy be capable of being adjudicated by judicial power . . . and (4) *that the determination of the controversy will result in practical relief to the complainant*. . . . [I]t is not the province of appellate courts to decide moot questions, disconnected from the granting of actual relief or from the determination of which no practical relief can follow. . . . In determining mootness, the dispositive question is whether a successful appeal would benefit the [plaintiff] or [the defendant] in any way." (Emphasis in original; internal quotation marks omitted.) *In re Angela V.*, 204 Conn. App. 746, 752, 254 A.3d 1042, cert. denied, 337 Conn. 907, 252 A.3d 365 (2021). "Where an appellant fails to challenge all bases for a trial court's adverse ruling on his claim, even if [the reviewing] court were to agree with the appellant on the issues that he does raise, [it] still would not be able to provide [him] any relief in light of the binding adverse finding[s] [not raised] with respect to those claims. . . . Therefore, when an appellant challenges a trial court's adverse ruling, but does not challenge all independent bases for that ruling, the appeal is moot." (Citation omitted; internal quotation marks omitted.) *State* v. *Lester*, 324 Conn. 519, 526–27, 153 A.3d 647 (2017).

A trial court's grant of reformation can be based on mutual mistake, unilateral mistake coupled with fraud or inequitable conduct, or, as in this case, primarily one, with the other in the alternative. See *Lopinto* v. *Haines*, 185 Conn. 527, 531, 441 A.2d 151 (1981) ("[a] cause of action for reformation of a contract rests on the equitable theory that the instrument sought to be reformed does not conform to the real contract agreed upon and does not express the intention of the parties and that it was executed as the result of mutual mistake, *or* mistake of one party coupled with actual or constructive fraud, or inequitable conduct on the part of the other" (emphasis added; internal quotation marks omitted)). Thus, if reformation is granted based on one ground and the other in the alternative, and an appellate claim challenges only one ground, the resolution of that claim will not result in practical relief, and, consequently, the claim is moot.

We are not convinced by the defendants' first argument that the plaintiff essentially withdrew its claim for reformation based on mutual mistake. Although the defendants are correct that the plaintiff "urged" unilateral mistake in its posttrial brief, the defendants have failed to persuade us that doing so constituted a withdrawal of the mutual mistake ground. The complaint, which asserted a claim for reformation based on both unilateral mistake and mutual mistake, never was amended. See *Costello & McCormack, P.C.* v. *Manero*, 194 Conn. App. 417, 426, 221 A.3d 471 (2019) ("The principle that a plaintiff may rely only [on] what he has alleged is basic. . . . It is fundamental in our law that the right of a plaintiff to recover is limited to the allegations [in the] complaint." (Internal quotation marks omitted.)). Moreover, the plaintiff represented to the court at trial that it was seeking relief on the reformation claim based on both grounds, and it mentioned both grounds in its posttrial brief. Perhaps most importantly, the trial court did not interpret the plaintiff's focus on unilateral mistake as a withdrawal of the mutual mistake ground, and it appears that neither did the defendants. Rather, the court primarily concluded that there was a mutual mistake, and, although the defendants' counsel claimed at oral argument before this court that he "had no notice" that the court was going to consider mutual mistake and that "both parties presented their arguments to the trial court based on unilateral mistake, not mutual mistake," the defendants' posttrial brief addressed the mutual mistake ground. In fact, it addressed both grounds under separate headings and in similar lengths.

We also are not convinced by the defendants' second or third arguments in support of their contention that their first claim on appeal is not moot. The defendants' counsel maintained at oral argument before this court that it is "logically impossible" to have reformation

based on both mutual mistake and unilateral mistake in the alternative, and, therefore, their claim cannot be moot for failing to challenge mutual mistake because it was impossible for the trial court to have found both in the first place. The defendants' counsel further argued that, based on the facts found by the court, Jashari knew at the time he signed the lease that there was a mistake, which, according to the defendants, would support only a claim of unilateral mistake and inequitable conduct; see *Traggis* v. *Shawmut Bank Connecticut, N.A.*, 72 Conn. App. 251, 805 A.2d 105, cert. denied, 262 Conn. 903, 810 A.2d 270 (2002); and, consequently, the court could not have additionally found the basis of a mutual mistake.[11] We determine that these arguments are indistinguishable and unpersuasive.

A mutual mistake exists "where, in reducing to writing an agreement made or transaction entered into as intended by the parties thereto, through mistake, common to both parties, the written instrument fails to express the real agreement or transaction." (Internal quotation marks omitted.) *Lopinto* v. *Haines*, supra, 185 Conn. 532. For example, this court affirmed reformation of a deed due to mutual mistake in *Derby Savings Bank* v. *Oliwa*, 49 Conn. App. 602, 714 A.2d 1278 (1998). In *Derby Savings Bank*, the defendant executed a mortgage deed and note to the plaintiff, but, due to a mistake by the attorney who drafted the mortgage documents, the deed had a description of the wrong property. Id., 602–603. The court, relying on the fact that the parties previously had signed a commitment letter that contained a description of the property that was intended to be covered by the mortgage, granted reformation based on mutual mistake, and we affirmed that decision. Id., 603. A unilateral mistake is a "mistake of one party," and to be a ground for reformation, it must be "coupled with actual or constructive fraud, or inequitable conduct on the part of the other." *Lopinto* v. *Haines*, supra, 531. Inequitable conduct exists where one party has "such knowledge as makes it 'inequitable' for [him] to retain his advantage." Id., 535. In *Traggis* v. *Shawmut Bank Connecticut, N.A.*, supra, 72 Conn. App. 251, for instance, this court affirmed reformation based on unilateral mistake coupled with inequitable conduct where the defendant seller intended for the parties' contract to provide for a closing of the property sale on August 15, 1994, but a secretary mistakenly wrote August 15, 1995, and the plaintiff buyer, although aware that it was a mistake, sought to enforce it regardless. Id., 253–57. The court concluded, and we affirmed, that the plaintiff had engaged in inequitable behavior because he knew that it was a typographical error but demanded the benefit of the contract despite his knowledge. Id., 259–60.

We determine that it is possible for a trial court to find mutual mistake and, alternatively, unilateral mistake

coupled with inequitable conduct. "It is well established that [i]n a case tried before a court, the trial judge is the sole arbiter of the credibility of the witnesses and the weight to be given specific testimony." (Internal quotation marks omitted.) *In re Aubrey K.*, 216 Conn. App. 632, 658, 285 A.3d 1153 (2022), cert. denied, 345 Conn. 972, 286 A.3d 907 (2023). Thus, even if a party testifies that the mistake was not common to both parties, as was the case here, the judge can find that testimony to be lacking credibility, find testimony in support of the contrary to be reliable, and, consequently, grant reformation on the ground of mutual mistake. See *Lopinto* v. *Haines*, supra, 185 Conn. 536 ("[w]e hasten to point out that we fully realize that the trier is the judge of credibility and, specifically, that what the terms of the agreement were was a question of fact for the trier" (footnote omitted)). That is precisely how the court in this case primarily found mutual mistake. It found Jashari's testimony that he believed the lease was intentionally executed without the triple net provision to be lacking credibility and the brokers' testimony to the contrary reliable. The finder of fact also can determine simultaneously that, even if it were a unilateral mistake, that ground is alternatively satisfied because there was sufficient evidence of inequitable conduct. In this case, for example, the court concluded that, even if the plaintiff had failed to establish that Jashari was also mistaken, "then there would have been a unilateral mistake by the plaintiff coupled with inequitable conduct by [Jashari]" because he was "attempting to rely upon and ratify an error which could not have been reasonably perceived to be an agreement of the plaintiff such that the defendant is attempting to take inequitable advantage of an obvious mistake by the plaintiff."

Moreover, assuming, arguendo, that the defendants are correct that reformation based on both mutual mistake and unilateral mistake is logically impossible, in this case the court "*primarily*" found "that there was a *mutual* mistake." (Emphasis added.) Unilateral mistake—which is the ground that the defendants focus on entirely in this appeal—was the alternative basis. Thus, even if we were to agree with the defendants and, as a result, hold that the court erred in concluding that the unilateral mistake ground was also alternatively satisfied, that does not change the fact that the defendants have not challenged on appeal mutual mistake, which, in that circumstance, would be the court's sole basis for reformation. Therefore, this argument by the defendants, even if it were persuasive, does not support their contention that their claim is not moot.

In sum, because the defendants have failed to challenge mutual mistake in addition to unilateral mistake in their first claim on appeal, we conclude that, even if we agreed with the defendants' first claim, we could not provide them with any practical relief. Accordingly, the defendants' first claim is moot.

II

We now turn to the defendants' second claim. The defendants argue that the court erred by granting the plaintiff equitable relief because the plaintiff's misconduct before the parties executed the lease barred its claim for reformation. Specifically, the defendants argue that, pursuant to *Essex* v. *Day*, 52 Conn. 483, 1 A. 620 (1885), the court should have precluded the plaintiff from prevailing on its claim for reformation because Mercede's conduct amounted to recklessness.[12] We are not persuaded.

We first set forth the standard of review that governs this claim and the substantive law relevant to when conduct can bar a claim for reformation. "A cause of action for reformation of a contract rests on the equitable theory that the instrument sought to be reformed does not conform to the real contract agreed upon and does not express the intention of the parties and that it was executed as the result of mutual mistake, or mistake of one party coupled with actual or constructive fraud, or inequitable conduct on the part of the other." (Internal quotation marks omitted.) *Lopinto* v. *Haines*, supra, 185 Conn. 531. "We will reverse a trial court's exercise of its equitable powers only if it appears that the trial court's decision is unreasonable or creates an injustice. . . . [E]quitable power must be exercised equitably . . . [but] [t]he determination of what equity requires in a particular case, the balancing of the equities, is a matter for the discretion of the trial court. . . . In determining whether the trial court has abused its discretion, we must make every reasonable presumption in favor of the correctness of its action. . . . Our review of a trial court's exercise of the legal discretion vested in it is limited to the questions of whether the trial court correctly applied the law and could reasonably have reached the conclusion that it did." (Internal quotation marks omitted.) *Bank of New York Mellon* v. *Madison*, 203 Conn. App. 8, 15, 247 A.3d 210 (2021). "When a decision in an equitable matter lies within the trial court's discretion, an appellate court will reverse that decision only when an abuse of discretion is manifest or where an injustice appears to have been done . . . ." (Internal quotation marks omitted.) *Traggis* v. *Shawmut Bank Connecticut, N.A.*, supra, 72 Conn. App. 264.

It is settled law in Connecticut that the unquestionable negligence of the party seeking relief, such as the failure to read the instrument and notice the mistake, does not bar its claim for reformation. The seminal case for this principle is *Essex* v. *Day*, supra, 52 Conn. 483.[13] In *Day*, the town of Essex sought to issue bonds that were to be payable at the option of the town in ten years and due in twenty years, but, due to a printing error, mistakenly issued bonds that were payable in twenty years and did not contain the option clause. Id.,

485 (preliminary statement of facts). Although many of the town's agents assisted in executing and issuing the bonds, none of them noticed the mistake until years later, and the treasurer, "who was charged more especially with the duty of vigilance in every thing affecting the finances of the town, signed the bonds without reading them, supposing that they were payable at the option of the town in ten years . . . ." Id., 492. The town filed suit, seeking reformation to correct the bonds when the defendant, who knew about the mistake when he purchased the bonds, refused to surrender them at the end of the ten year period. Id., 494. Our Supreme Court assessed whether the town had been guilty of "fatal negligence" such that it should be precluded from equitable relief. Id., 492. The court recognized that there was "unquestionably a reprehensible carelessness; a lack of intelligent attention to the matter that must be regarded as not only unreasonable but culpable." Id. Nonetheless, the court noted that "[t]he question however, as we conceive, is not so much whether a culpable negligence existed, as it is, whether such negligence should operate to bar the plaintiffs from relief against this defendant. This negligence is not of the extremist kind which the courts sometimes characterize as the equivalent of fraud. It was not recklessness; it was mere want of care. There was no indifference to the effect; it was simply an honest assumption that all was right. It is to be classed only with those incautious and unbusiness-like acts which are constantly presenting themselves and would not have been noticed but for some mischief that they have wrought. Thus a man carelessly signs a note for [$1000] which he supposed to be for [$100]. Through a mistake of the scrivener it is thus written, when he had directed that it be written [one] hundred, and he signs it without reading it. This is certainly gross carelessness; but should it debar him from all remedy against a party who receives the note knowing of the mistake? Would not a court of equity enjoin the holder who took it with full knowledge against its collection? Would it be good in his hands, in any court admitting of equitable defenses, for more than [$100]? We think therefore that the negligence of the plaintiffs in the execution and issuing of the bonds, was not of such a character as to preclude all equitable relief against the present defendant." Id., 492–93.

In the present case, the defendants argued that, although under *Day* a party will not be barred from reformation if the party is merely negligent, here, "the plaintiff acted recklessly" and went "far beyond" the conduct in *Day*, and, therefore, the plaintiff should have been barred from reformation. Specifically, the defendants argued that, although *Day* involved a "single mistake that no one involved" saw, in the present case, Mercede "had at least six and possibly more chances to see and correct his so-called 'mistake' "; "knew even

before his lawyer started drafting the lease that who was to pay taxes was an issue between himself and Jashari"; "was consciously aware that there was no line item in Jashari's [projection] demonstrating that the tenant would pay property taxes, but he did nothing to clarify that"; "pro-rated rent, but not taxes" at the closing; and overall was "aware of and consciously ignored the facts that were obviously arrayed before him."

The court was not persuaded by the defendants' argument. It reasoned: "The most plausible observation made by the defendants is that [Mercede] . . . was remiss in not having caught the error sooner. That, however, is likely an almost-always applicable observation in contract reformation—why didn't the plaintiff catch the error sooner (before execution)? As reflected in the cases cited by the defendants, [*Essex* v. *Day*, supra, 52 Conn. 483, and *Voll* v. *Lafayette Bank & Trust Co.*, 223 Conn. 419, 429, 613 A.2d 266 (1992)], negligence—even 'gross' negligence—is not an automatic disqualifier for reformation. With refreshing candor, counsel for the plaintiff, involved in the drafting of the lease, admitted responsibility for the disparity between the actual agreement of the parties as reflected by the letter of intent and the lease he drafted ostensibly based on that letter of intent." (Footnote omitted.) The court additionally noted that, despite the defendants' efforts, it had "great difficulty distinguishing" from the present case *Day* and *Voll*, in which cases the parties who sought relief were merely negligent.

The court also made factual findings that directly refuted the underpinnings of the defendants' argument that Mercede was reckless. The defendants argued that Mercede was reckless because he knew that who was going to pay taxes was an issue, yet the court concluded that "[t]here is no documentary evidence, and no plausible/credible testimony (if at all), to the effect that the defendants had ever communicated 'second thoughts' about a triple net provision in the lease to the plaintiff. Even if [Jashari] had communicated to the brokers his concerns about how much taxes might escalate over the years, the court cannot find any credible basis for any contention that [Jashari] had communicated with the plaintiff in any way suggesting a reluctance to proceed on a triple net basis."

The defendants also argued that Mercede was reckless because he "was consciously aware" that the projection did not have a line item for real estate taxes and "did nothing to clarify that," yet the court, like Mercede, found that the projection's line item for rent must have incorporated real estate taxes within it. The court determined: "If the argument is that there was no explicit or separate 'provision for real estate taxes' on [the projection], that statement would appear to be correct (in a literal sense). However, the aggregate rental expense shown on that document for the first

two years is $156,000 and $162,000, respectively. With a base rent of $9500 per month for each of those years, and if it were assumed that there were no triple net requirement, the aggregate annual rent would be $114,000 (12 x $9500), leaving a difference between 'true' rent and the total rent expense shown on the form of $42,000 for the first year and $48,000 for the second year. Those disparities are well in excess of the annual tax for the 2018-2019 fiscal year ($35,270), such that even if there were a modestly substantial increase in taxes for the first year of the lease (2019-2020), the discrepancy in figures would be adequate to cover it. There may well be other expenses characterized in terms of being related to rent, but the only apparent and plausible explanation for the sizeable discrepancies would seem to be that the defendants did, in fact, include tax reimbursement as part of the aggregate rental expense on the document." (Footnote omitted.)

Although the court noted that the defendants' argument about Mercede having adjusted for rent but not for taxes at the closing was "[t]he only portion of the defendants' narrative that potentially could support the defendants' position," it concluded that it would only support the position "if there were any evidence of an intent to change the terms of the lease." But "[t]here was no credible evidence, if any at all, to [that] effect."

On appeal, the defendants make the same argument that they did to the trial court. They state in their brief that "[r]esearch has not located a single case in Connecticut, or elsewhere for that matter, in which a party seeking relief under unilateral mistake has been so oblivious to its rights as was the plaintiff in this case" and "[t]he closest analogous case to the one at bar is [*Essex* v. *Day*, supra, 52 Conn. 483]," which "does not come close to approaching the sloppiness with which Mercede claims he acted." They further argue that "the facts demonstrate that Mercede's conduct was at least reckless, if not intentional." Specifically, they contend that Mercede was reckless because "[he] knew or could certainly have known that Jashari did not intend to pay real estate taxes and intentionally ignored that fact"; "[he] alone had multiple opportunities to discover the mistake and had actual evidence that Jashari did not share his understanding on the real estate taxes," whereas in *Day*, "numerous town actors were involved in creating and perpetrating the mistake"; and he did not catch the mistake when he saw that the projection did not have a line item for taxes or when he adjusted for rent at the closing.

We are not persuaded that the court's decision to grant reformation was an abuse of discretion or caused an injustice. The defendants have failed to cite to any evidence in the record to support their contentions that Mercede "knew or could certainly have known that Jashari did not intend to pay real estate taxes and inten-

tionally ignored that fact" and "had actual evidence that Jashari did not share his understanding on real estate taxes." Upon our review, these unsupported assertions are the very antithesis of the trial court's findings. We also are not persuaded by the defendants' attempt to distinguish *Day* from the facts of this case. Rather, we agree with the trial court's conclusion that *Day* is indistinguishable.

As previously mentioned in this opinion, our Supreme Court held in *Day* that, although it was "certainly gross carelessness" for the town to miss the error on the bonds, "[i]t was not recklessness" and did not preclude equitable relief. *Essex* v. *Day*, supra, 52 Conn. 493. In the present case, the defendants have failed to persuade us that Mercede's conduct was any different from that involved in *Day*. We are not convinced by the defendants' non sequitur argument that, because in *Day*, "numerous town actors were involved in creating and perpetrating the mistake" whereas here, Mercede acted alone, he was therefore reckless. If anything, one would surmise that the more hands a mistake passes through without it being caught, the greater the negligence. The defendants in their brief and at oral argument adamantly relied on the fact that the lease passed through Mercede's hands on multiple occasions without him reading the lease and recognizing the mistake, but "it has never been the law of this state that the mere omission to read [the written instrument], or to know all its contents, would bar any relief by way of reformation of such instrument." *Fidelity & Casualty Co.* v. *Palmer*, 91 Conn. 410, 418, 99 A. 1052 (1917). That is exactly what happened in *Day*—multiple town officials and the treasurer failed to read the bonds and notice the mistake—and that is exactly what our Supreme Court held was *not* enough to constitute recklessness so as to bar reformation. As the trial court in the present case correctly pointed out, negligence in the form of failing to read the instrument and recognize the mistake, although still negligence, is "almost always applicable" to this context and has never been, and is not now, "an automatic disqualifier for reformation."

The only arguments by the defendants that may be somewhat persuasive are that Mercede did not inquire into the projection despite the fact that it did not have a line item for real estate taxes and that he did not account for the taxes when he adjusted for the rent at the closing. We are required to make every reasonable presumption in favor of the correctness of the court's actions. See *Bank of New York Mellon* v. *Madison*, supra, 203 Conn. App. 15. In doing so, we conclude that the court's rejection of those arguments, as discussed earlier in this opinion, was reasonable.

For the foregoing reasons, we conclude that it was not an abuse of discretion or an injustice for the court to have granted the plaintiff equitable relief in the form

of reformation.

The portion of the appeal related to the claim that the trial court improperly granted reformation of the contract on the ground of unilateral mistake is dismissed as moot; the judgment is affirmed.

In this opinion the other judges concurred.

[1] Ismet Jashari, Dorian's father, acted as the guarantor on the lease that is at issue in this appeal. Ismet Jashari was not materially involved in the events that are relevant to this appeal.

[2] Jashari graduated with high honors from Manhattanville College, where he majored in both legal studies and economics and minored in psychology. During college, Jashari engaged in freelance work relating to e-commerce, stocks, and cryptocurrency, "[ran] the financials" for a mechanic shop of a gas station that his father co-owned, and assisted his father with his construction business. Additionally, around the time that Jashari graduated college, his father transferred his ownership interest in several town houses to Jashari "for court purposes" so that Jashari could commence eviction proceedings. Jashari was a self-represented party in those proceedings.

[3] Although Pyramid Realty Group initially represented only the interests of the plaintiff, the parties later entered into an agreement that it represented both sides of the transaction.

[4] At trial, Jashari testified that "key money" refers to "[t]he money needed in order to acquire the business." Although the parties have not further explained this term with any additional specificity, it is apparent from the context of the record that it refers to a lump sum of money paid to a landlord by a tenant to secure a commercial tenancy.

[5] See also *Walgreen Eastern Co.* v. *West Hartford*, 329 Conn. 484, 488, 187 A.3d 388 (2018) ("[t]he developer entered into a 'triple net' or 'NNN' lease with the plaintiff under which the plaintiff was responsible for the payment of all insurance, maintenance, and property tax expenses").

[6] Although the parties refer to this date as the "closing," Paul clarified in his testimony that it was not a formal closing because, by that point, the lease had been signed and checks had been delivered. Nonetheless, for purposes of clarity, we will refer to it as the closing as well.

[7] The plaintiff also asserted a claim for unjust enrichment. Because the trial court found in favor of the plaintiff on its claim for reformation, it concluded that it would be legally inconsistent to find in favor of the plaintiff on its unjust enrichment claim, and, therefore, it found in favor of the defendants on that claim. Thus, the unjust enrichment claim is not at issue in this appeal.

[8] As discussed throughout this opinion, the trial court found Jashari's testimony overall to be lacking in credibility.

[9] "[I]t is the exclusive province of the trier of fact to weigh the conflicting evidence, determine the credibility of witnesses and determine whether to accept some, all or none of a witness' testimony." (Internal quotation marks omitted.) *Delena* v. *Grachitorena*, 216 Conn. App. 225, 231, 283 A.3d 1090 (2022).

[10] We notified the parties that "counsel of record shall be prepared to address whether this appeal is moot; see *State* v. *Lester*, 324 Conn. 519, 526–27 [153 A.3d 647] (2017); for failure to challenge the trial court's conclusion that the plaintiff established its right to reformation on the ground of mutual mistake, which conclusion is an independent alternative basis for the trial court's judgment. See *Lopinto* v. *Haines*, 185 Conn. 527, 531 [441 A.2d 151] (19[8]1)."

"Although the parties did not raise the issue of mootness in this appeal, we do so sua sponte because mootness implicates the court's subject matter jurisdiction and is, therefore, a threshold matter to resolve." *State* v. *Arpi*, 75 Conn. App. 749, 751, 818 A.2d 48 (2003).

[11] To the extent that this argument could be construed as an independent challenge to the court's finding of mutual mistake, we note that such an argument would be unavailing. The fact that the defendants did not challenge the court's finding of mutual mistake in their first claim is the very reason that we determine this claim to be moot.

[12] In their principal appellate brief, the defendants also rely heavily on § 157 of the Restatement (Second) of Contracts and case law from other jurisdictions interpreting it. Section 157 provides: "A mistaken party's fault in failing to know or discover the facts before making the contract does not bar him from avoidance or reformation under the rules stated in this

Chapter, unless his fault amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing." 1 Restatement (Second), Contracts § 157, p. 416 (1981). The defendants argue that Mercede did not act in "good faith" or comport himself "in accordance with reasonable standards of fair dealing," and, therefore, the court should have rejected the plaintiff's claim for reformation. (Internal quotation marks omitted.) No Connecticut court has cited to, let alone adopted, § 157 of the Restatement (Second) of Contracts. The defendants acknowledge that it is nonbinding secondary authority but assert that we should look to it for guidance because "[t]he law has changed since the Supreme Court issued its decision in [*Day*], yet neither it nor this court in the ensuing 137 years has had cause to address a fact pattern similar to the one presented in this case."

*Day*, despite its age, remains good law, and this court and other courts have continued to rely on it. See *Traggis* v. *Shawmut Bank Connecticut, N.A.*, supra, 72 Conn. App. 267–68; *Office Furniture Rental Alliance, LLC* v. *Liberty Mutual Fire Ins. Co.*, 981 F. Supp. 2d 111, 122 n.7 (D. Conn. 2013). Moreover, "[i]t is axiomatic that, [a]s an intermediate appellate court, we are bound by Supreme Court precedent and are unable to modify it. . . . [W]e are not at liberty to overrule or discard the decisions of our Supreme Court but are bound by them. . . . [I]t is not within our province to reevaluate or replace those decisions." (Internal quotation marks omitted.) *State* v. *Yury G.*, 207 Conn. App. 686, 693–94 n.2, 262 A.3d 981, cert. denied, 340 Conn. 909, 264 A.3d 95 (2021). Thus, we decline the defendants' invitation to look to § 157 of the Restatement (Second) of Contracts for guidance and, instead, we address the defendants' claim only as it relates to *Day*.

[13] See also *Voll* v. *Lafayette Bank & Trust Co.*, 223 Conn. 419, 429, 613 A.2d 266 (1992) (affirming that mere negligence cannot defeat claim for reformation because holding otherwise "would reward fraudulent conduct at the expense of one whose mere carelessness had caused him unwittingly to agree to terms not contemplated by the parties" and "[e]quity should not sanction such an unconscionable result"); *Cherkoss* v. *Gasser*, 123 Conn. 368, 371, 195 A. 737 (1937) (holding that negligence of parties seeking relief did not preclude them from obtaining reformation); *Geremia* v. *Boyarsky*, 107 Conn. 387, 392, 140 A. 749 (1928) (holding that defendants were entitled to decree canceling contract despite their negligence in calculating their bid, when plaintiff, before he signed contract, had good reason to believe substantial error had been made in amount of bid and, while contract was still executory, refused to permit correction of error and attempted to take unconscionable advantage of it).